

Rescuing Human Rights in Mauritius During the COVID 19 Tsunami

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In the evening of 18 March 2020, Mauritians learnt the harsh news that their tropical heaven island of about 1.2 million people was also being swept by the coronavirus (COVID 19) tsunami, with three confirmed cases. As of [21 April 2020](#), the country has recorded a total of 328 cases, with 73 of them still being active and 9 deaths. Initially recording high increases in the confirmed number of COVID 19 cases, the country has been able to flatten its curve, without even a single case being recorded on some days. Depending on the trend of the spread, the government is working on a COVID 19 Bill that will gradually re-open the economy as from 4 May 2020.

Even before the confirmed cases, Mauritius was regularly updating its citizens on the status of COVID 19 and on the quarantine measures introduced for people entering from abroad. This was done through press conferences, [communiqués](#), its social media pages, more specifically the official Facebook page of the Ministry of Health and Wellness to communicate about COVID 19: [Coronavirus Moris](#). Additionally, it set up a [website dedicated to COVID 19](#) on top of its government portal and launched an app called [beSafeMoris](#) that allows Mauritians to have more information about COVID 19.

Mauritius' Response to COVID 19

Once there were confirmed cases in the country, the government took several steps as [recommended](#) by the World Health Organisation (WHO) relating to lockdown, contact tracing and sensitisation campaigns to ensure that the virus does not spread further. The most significant measures are as follows:

The government 'closed' its borders through the adoption of [Quarantine \(Quarantinable Diseases\) Regulations under the Quarantine Act](#) that came into force on 19 March 2020. Accordingly, the government can prohibit seagoing vessels and aircraft from departure, transit or disembarkation if it is 'necessary to prevent a danger to public health in Mauritius, including the spread of infection of quarantinable disease in Mauritius'. Under this regulation, it was announced that passengers from seagoing vessels and aircrafts will not be allowed in Mauritius unless they are crew members or if any special arrangement has been made to bring in Mauritian nationals. Eventually, after most Mauritian nationals were brought back to the country and a member of the aviation company was tested positive for COVID 19, there was a complete closure of the border except for cargo.

According to Part V (sections 78 to 83) of the [Public Health Act](#), the Minister of Health and Wellness may make regulations that they think 'fit' to prohibit the propagation of dangerous communicable diseases in Mauritius. In this vein, the

Prevention and Mitigation of Infectious Disease (Coronavirus) Regulations 2020 were adopted which provides for, amongst others, quarantine placement for those suspected of having contracted the virus and isolation and screening of those infected with the virus.

The Minister of Health and Wellness also issued a Curfew Order under Regulation 14(1) of the Prevention and Mitigation of Infectious Disease (Coronavirus) Regulations 2020 to the effect that, apart from public officer and essential services, no person should remain outdoors as from 23 March 2020 till 2 April 2020. The curfew order categorised 'judicial officers in respect of such minimum judicial services as the Chief Justice deems' (this was further restricted due to a member of the judiciary being tested positive: urgent matters such as bail and protection orders are now being done using teleconferencing), 'employees of the public sector, including Ministries and Government departments, public enterprises and statutory bodies, providing essential services to the public as may be designated by the Head of the public bodies concerned essential' and 'employees of the private sector providing strictly essential minimum services as those who are exempted from the curfew order.

On 10 April 2020, Cabinet of Ministers decided to [extend](#) the curfew till 4 May 2020.

In order to support the 'population and the community at large who are being affected by the COVID 19 pandemic', the government established the COVID 19 Solidarity Fund on 25 March 2020. The government has used this fund to, amongst others, distribute food packs to those who have a social security card.

The above steps meant that the country was on lockdown, and even on complete lockdown from 25 March to 2 April. The complete lockdown meant that only essential services such as police, hospitals, dispensaries, private clinics, firefighters and banks will be operational, with other activities being banned during the period. On 2 April, supermarkets and shops, with the exception of bakeries, restarted operations with Mauritians being allowed to visit them in alphabetical order on certain days. Following the initial lockdown, the National Assembly has been suspended and they were considering working online but as at [20 April 2020](#) there has been no resolution to that effect. National Assembly resuming online would ensure debates around the measures being implemented by the government to combat COVID 19. At the moment, it is the Cabinet of Ministers, or the Minister of Health and Wellness, or the Prime Minister taking measures without them being debated by members of the opposition.

Impact on Human Rights

The measures taken above indeed have assisted Mauritius in flattening the curve. However, at the same time, they have had drastic effects on the human rights of the population. The Constitution of Mauritius is limited in the sense that it protects only civil and political rights: Mauritius is a welfare state that protects economic, social and cultural rights such as health and education through Acts of Parliament. For the purposes of this report, I will focus on both the Constitution (freedom of movement,

freedom of assembly and association, freedom of expression, access to justice and protection from inhumane treatment) and Acts of Parliament (right to health and rights of vulnerable persons).

Rights in the Constitution

Section 18 of the Constitution provides for derogation from fundamental rights and freedoms under emergency powers. However, it is to be noted that the steps taken by the government to combat COVID 19, were not taken under the Constitution but through regulations and orders. Hence, one can assume that the rights in the Constitution must still be protected and realised. Nevertheless, by the very nature of COVID 19, rights in the Constitution are being limited, if not infringed. For instance, most Mauritians no longer have freedom of movement, and freedom of assembly and association. For the latter, if one has access to internet, one can still carry their activities online but the reality is that not everyone is technologically savvy or has the resources to be part of online meetings. Despite the fact that there is limitation/infringement of these rights without a Presidential Proclamation as provided by section 18 of the Constitution, most Mauritians, including members of the opposition agree that the steps taken by the government in relation to freedom of movement, and freedom of assembly and association are proportionate to combat COVID 19.

In addition to these obvious rights in the Constitution that are being limited/infringed, the following rights are also being affected.

Freedom of Expression

Since the outbreak of COVID 19, many governments are struggling to contain fake news and the same is the case for the government of Mauritius. For instance, on 24 March 2020, one person [published fake news](#) about looting and rioting in one part of the island on his Facebook page. He was arrested and charged under the Communication Technologies Act and is currently under conditional liberty. The government has been very strict in its response for those who publish fake news, but also includes jokes on social media: One person [was arrested for posting a meme](#) against the government on social media in breach of the Information and Communication Technologies Act. Such an arrest demonstrates that the government is not respecting the freedom of expression of the citizens and is using the COVID 19 as a shield to prosecute those who have negative opinions about the governing party.

Additionally, it has been contented that the decision of the Independent Broadcasting Authority (IBA) to [suspend the license](#) one of the radio stations, TOP FM, during the lockdown (from 4 to 6 April 2020) for a matter that happened in August 2019 concerning the constitution of the board of the IBA, was a threat to freedom of expression and information since that outlet would no longer be able to share critical COVID 19 news to the population.

Access to Justice

With the steps being taken by the government, accessing justice is challenging. At the moment, through a communiqué of the Chief Justice, District, Intermediate and Supreme Courts are working on urgent matters through technological means. Matters such as bail, cancellation of arrest warrants and protection orders for women and child victims of violence at the District Court level are being heard online, through teleconferencing. However, despite these steps, other matters have been put on hold and as such, the trial period is being extended, thus violating the principle of trial within a reasonable time, with some being in prison remand awaiting verdict. Setting up an online courtroom where cases can still be heard can mitigate this. The criticism of this set up is that there is no personal touch, especially with testimonies. To avoid such, the Courts can still work on cases that are on their final stages or those that do not require testimonies.

Additionally, the right to legal representation is also under threat. For instance, in the arrest for posting a meme, the police [booked her counsel](#) for breach of the Curfew Order since they did not have the required memo that would allow them to move around and assist their client. Such a requirement, even in the case of an emergency, can prolong the time spent in police custody. The right to legal representation is a constitutional right which is under the threat of being infringed by a regulation since the police do not consider the provision of legal advice being an essential service in emergency.

Inhumane Treatment

According to the Curfew Order, anyone in breach is liable to a fine not exceeding 500 Mauritian rupees (13 USD) and to imprisonment for a term not exceeding six months. The police were not mandated to use force to enforce the regulations, although generally they are allowed to use reasonable force in the performance of their duty that is proportionate to the attack being inflicted upon them.

Since the beginning of the lockdown in Mauritius, several [videos](#) have been posted on social media that demonstrate that the police are using excessive force with the population to ensure that they stay indoors. One such incident was on [24 March 2020](#) when the police resorted to excessive use of force in retaliation to projectiles being thrown at them upon trying to disperse a crowd. Instead of condemning the police for such actions, many citizens encouraged them to use force to ensure that people stay indoors. However, arguably such acts amount to inhuman treatment that is prohibited in the Constitution. The government has opened an investigation in the matter and has even [arrested](#) a police officer in relation to the inquiry.

Right to Health

Mauritius is a welfare state that provides for free universal healthcare. Access to treatment in case of COVID 19 is not generally an issue for the population. Prior to the COVID 19 outbreak in Mauritius, the Souillac Hospital was converted into a

quarantine hospital and subsequently, the government identified other places such as hotels and recreational centres to accommodate those in quarantine. Despite these steps taken by the government, the medical personnel complained that COVID 19 patients were still in the same hospital as other patients and that they were not properly equipped to fight the virus, thus risking their health.

Concerning the general population who were not infected by COVID 19, once the country went on a lockdown, the public was advised not to go to medical health care facilities unless it was an emergency. These steps have, however, led to citizens being [refused medical attention](#). Such steps act as a barrier for those who want to access healthcare services since they now cannot go to the dispensary close to their house but have to travel for long distances to go to hospitals.

Vulnerable Persons

Vulnerable persons such as women, children, persons with disabilities and older persons are all affected by the lockdown. Several rights that relate to vulnerable groups are being limited and the government has taken steps to address some of these vulnerabilities. For instance, it has introduced education programmes via television for students. It has publicised a hotline for victims of domestic violence. It has ensured that older persons and persons with disabilities have access to their pension by delivering to their house, and has conducted a vaccination campaign which vaccinated older persons against the flu in their homes.

However, these measures are not enough. It does not take into account students who have disabilities such as hearing and visual impairments. Moreover, for victims of domestic violence, it is difficult for them to call the hotline when the perpetrator is always in the house. As for older people, they are usually living on their own and it is challenging for them to go out for groceries even if they may not seek help from the police (even where they can) as they may be uncomfortable to call the police for such issues.

Parents who share custody of a child have been advised not to move the children except where one parent is abusive, in case of which the other parent can approach the Family Division of the Supreme Court. The fact that the child is not spending the allocated time with each parent might not be in the best interests of the child.

Conclusion and Recommendations

While adopting regulations and orders to combat COVID 19, the government has limited some human rights. Although it has taken steps to ensure that such limitations are minimal, it is important that the government adopts a human rights approach while taking decisions related to COVID 19, including in the drafting of the COVID 19 Bill. Additionally, while fighting fake news, the government needs to ensure that it is not limiting freedom of expression and information of its citizens.

